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5 Attorney for Plaintiff
DON BORG
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7 UNITED STATES DISTRICT COURT
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9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10 DON BORG,) No. C 07-03149-JW
11)
12 Plaintiff,)
13)
14 vs.)
15)
16 PRINCIPAL LIFE INSURANCE CO.,)
17 TARGET CORPORATION and DOES 1)
18 through 20, inclusive,)
19 Defendants.)
20)
21)
22)
23)
24)
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27)
28)

PLAINTIFF OPPOSES THE DEFENDANTS' MOTION TO DISMISS/MOTION FOR
SUMMARY JUDGMENT, AND CASE MANAGEMENT CONFERENCE FROM JUNE 9
2008 TO JUNE 30 2008 OR LATER (OCTOBER 6 2008 IS SUGGESTED) , AND TO
EXTEND THE TIME FOR PLAINTIFF TO FILE HIS OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT. THIS IS SUPPORTED BY
THE DECLARATION OF STANLEY G HILTON.

THIS WAS STATED IN THE EX PARTE APPLICATION FOR LEAVE TO FILE
LATOPPOSITION AND TO CONTINUE HEARING, FILED ON MAY 30, 2008.

1 PLAINTIFF NEEDS SEVERAL WEEKS TO PREPARE A PROPER OPPOSITION TO
2 THE MOTION BUT WISHES TO VOICE HIS OPPOSITION HERE AND ASKS FOR LEAVE
3 TO CONTINUE THE HEARING.

4
5 AS STATED IN THE EX PARTE, THE REASONS FOR THIS REQUEST ARE
6 THREEFOLD: (1) PLAINTIFF'S COUNSEL HAS A CONFLICT IN SCHEDULE ON JUNE 9
7 2008 AND NEEDS TO BE IN ANOTHER COURT FOR ANOTHER TRIAL SET FOR THAT
8 DATE, AND (2) DUE TO AN OVERSIGHT IN CALENDAR AND ACCIDENTAL ERASURE
9 OF DUE DATE FOR OPPOSITION, AND ILLNESS, PLAINTIFF'S COUNSEL HAS NOT
10 BEEN ABLE TO FILE AN OPPOSITION TO THE MOTION AND REQUESTS UNTIL AT
11 LEAST JUNE 9 2008 TO BE ABLE TO FILE HIS OPPOSITION; (3) THE DEFENDANTS
12 HAVE ANNOUNCED THAT THEY INTEND TO FILE A MOTION FOR RULE 11
13 SANCTIONS AGAINST PLAINTIFF AND SET IT FOR HEARING OCT 6 2008 AND WE
14 SUGGEST THE SAME DATE BE SET FOR ALL THREE MATTERS AS THEY ARE
15 RELATED. . HE DISCOVERED THIS OVERSIGHT ONLY ON MAY 29 2008 AND
16 PROMPTLY CALLED DEFENSE COUNSEL EVA SCHUELLER AND ASKED HER TO
17 STIPULATE TO CONTINUE THE HEARING; SHE REFUSED.

18 IT IS UNFAIR FOR PLAINTIFF TO NOT BE ALLOWED TO FILE AN OPPOSITION
19 TO THE MOTION TO DISMISS/MSJ. NO PREJUDICE EXISTS AS TO DEFENDANT IF
20 THE HEARING IS CONTINUED A FEW WEEKS. IN ANY EVENT DEFENSE COUNSEL
21 SAID SHE IS FILING A MOTION FOR SANCTIONS AND SETTING IT FOR OCTOBER 6
22 2008 SOP WE SUGGEST THE COURT CONTINUE ALL THREE MATTERS TO OCTOBER
23 6, OR AT LEAST TO JUNE 30, CLEARLY THE MOTION FOR SANCTIONS ADDRESSES
24 THE VALIDITY OF THE COMPLAINT AND AMENDED COMPLAINT SO THE MOTIONS
25 SHOULD BE HEARD AT THE SAME TIME.

26 **DECLARATION OF STANLEY G HILTON**

27 I DECLARE:

28 1. I AM ATTORNEY OF RECORD FOR PLAINTIFF BORG IN THIS CASE.

1 2. DUE TO CALENDAR ERROR AND ACCIDENTAL ERASURE OF THE
2 DUE DATE FOR THE PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO
3 DISMISS/MOTION FOR SUMMARY JUDGMENT, I DID NOT REALIZE UNTIL
4 YESTERDAY (MAY 29N 2008) THAT AN OPPOSITION HAD BEEN DUE TO SAID
5 MOTIONS ON OR ABOUT MAY 19 2008 BECAUSE THE HEARING IS SET FOR JUNE 9.
6 I DISCOVERED THIS ON MAY 29 AND PROMPTLY ASKED DEFENSE COUNSEL EVA
7 SCHEUELLER IF SHE WOULD STIPULATE TO CONTINUE TH HEARING FROM JUNE 9
8 TO A LATER DATE; SHE REFUSED.

9 3. SCHUELLER ALSO INDICATED THAT DEFENDANTS PLAN TO FILE A
10 MOTION FOR RULE 11 SANCTIONS AGAINST PLAINTIFF AND ME IMMINENTLY
11 AND SET IT FOR HEARING ON OCTOBER 6 2008. BECAUSE MANY OF THE ISSUES
12 IN BOTH THE RULE 11 MOTION AND THE MOTION TO DISMISS ARE RELATED,
13 DEALING WITH THE VALIDITY OF PLAINTIFF'S CASE, I SUGGEST THE COURT
14 CONTINUE ALL THREE MATTERS TO THE SAME DATE, OCT 6 2008. IN THE
15 ALTERNATIVE I SUGGEST JUNE 30 AS A HEARING DATE FOR THE MOTION TO
16 DISMISS/SUMMARY JUDGMENT,

17 4. I RECENTLY SUFFERED A FRACTURED ANKLE AND AM IN GREAT PAIN.
18 THIS WAS DIAGNOSED BY MY PODIATRIST AND THE PAIN INTERFERES WITH MY
19 ABILITY TO WORK. I REQUEST AN EXTENSION OF TIME TO JUNE 9 OR LATER TO
20 FILE PLAINTIFF'S OPPOSITION TO THE MOTION TO DISMISS/SUMMARY
21 JUDGMENT. I NEED THIS TIME, TO PREPARE THE OPPOSITION.

22 5. IN ADDITION, I AM COUNSEL OF RECORD FOR ANOTHER CLIENT IN NA
23 CRIMINAL CASE MATTER WHICH IS CURRENTLY SET FOR TRIAL ON JUNE 9 2008
24 AT 9 AM IN SAN MATEO COUNTY SUPERIOR COURT IN SOUTH SAN FRANCISCO CA
25 , PEOPLE V. FOGARTY. ALTHOUGH THAT CLIENT INDICATED SHE WANTS TO
26 CHANGE LAW3YERS RECENTLY, AS FAR AS I KNOW I AM STILL HER COUNSEL OF
27 RECORD AND I HAVE TO APPEAR AT 9 AM ON JUNE 9 IN THAT COURT IN SOUTH
28 SAN FRANCISCO, CA, SINCE I HAVE NOT BEEN OFFICIALLY RELIEVED,. THUS I

1 HAVE A SCHEDULE CONFLICT WITH THIS CASE FOR THAT DAY AND TIME.

2 6. I BELIEVE PLAINTIFF HAS VALID GROUNDS TO OPPOSE DEFENDANTS'
3 MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT AND I BELIEVE I CAN
4 STATER THOSE GROUNDS IF GIVEN A CHANCE TO DO9 SO; HENCE THE REQUEST
5 FOR EXTENSION OF TIME TO FILE OPPOSITIONS TO THE MOTION.

6 I DECLARE UNDER PENALTY OF PERJURY OF THE US THAT THE ABOVE IS
7 TRUE AND CORRECT. EXECUTED ON MAY 30 2008 IN HILLSBOROUGH, CA.

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9 DATED: MAY 30, 2008

10 RESPECTFULLY SUBMITTED,

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12 _____/S/

13 STANLEY G. HILTON

14 ATTORNEY FOR PLAINTIFF
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